

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Dennis G. CROWLEY 115-48-9694-D2

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2481

Dennis G. CROWLEY

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.701.

By order dated 8 December 1987, an Administrative Law Judge of the United States Coast Guard at New York, New York, suspended outright Appellant's Merchant Mariner's Document for five months. This order was issued upon finding proved a charge of violation of law, supported by one specification. The charge and specification found proved that Appellant did serve as deckhand on board the tug MORIA MORAN, under the authority of the captioned document, on or about 12 February 1987 to on or about 18 February 1987, after surrounding the captioned document on 18 January 1987 to the U.S. Coast Guard in compliance with the Decision and Order issued by the Administrative Law Judge at New York on 14 January 1987 and prior to the document's return in violation of 46 U.S.C. 8701(b).

The hearing was held at New York, New York, on 1 May 1987. Appellant appeared at the hearing and was represented by non-lawyer counsel. Appellant entered, in accordance with 46 CFR 5.527(a), an answer of no contest to the charge and specification.

The Investigating Officer introduced one exhibit into evidence and called no witnesses.

Appellant introduced no exhibits into evidence and called no witnesses. Appellant did not testify under oath, however, he did make unsworn, mitigating statements in his own behalf.

The Administrative Law Judge concluded, as a matter of law, that, on the basis of the answer of no contest, the charge and specification were found proved by substantial evidence of a reliable and probative

nature.

The complete Decision and Order was dated 8 December 1987 and was served on Appellant on 16 December 1987. Notice of Appeal was timely filed and considered perfected on 14 March 1988. Appellant's pro-se appeal is now properly before me for review.

### FINDINGS OF FACT

At all times relevant, Appellant was the holder of Coast Guard Merchant Mariner's Document No. 115-48-9694-D2. Appellant's document authorized him to serve as a grade B tankerman and all lower grades, as well as able seaman (special), steward department (FH).

On 9 January 1987, the Administrative Law Judge in New York, New York, issued a Decision & Order suspending Appellant's document outright for one month with an additional suspension for five months. This additional five month suspension was not to be effective provided no charge under 46 U.S.C. 7703, 7704, or any other navigation or vessel inspection law was proved against him for acts committed within twelve months from the date of termination of the outright suspension. A copy of this Decision & Order was sent to the Appellant by certified mail on 14 January 1987.

Appellant surrendered his document pursuant to the Decision & Order of 9 January 1987 on 18 January 1987. The period of outright suspension as a result of the Decision & Order of 9 January 1987 was for a period of one month commencing on the date Appellant surrendered his document.

From on or about 12 February 1987 to on or about 18 February 1987, Appellant served as deckhand aboard the tug MORIA MORAN, a vessel of 198 gross tons. Appellant was required by 46 U.S.C. 8701(b) to hold a merchant mariner's document while serving in the capacity of a deckhand during this period. Appellant served as a deckhand aboard the tug MORIA MORAN while his document was suspended outright.

### BASES OF APPEAL

Appellant raises the following issues on appeal:

(1) A merchant mariner's document is not required for service aboard uninspected vessels operating in harbors and sounds.

(2)Reliance upon the statement of the President of the Local Union caused the unknowing violation.

(3)The Commandant should modify the Administrative Law Judge's order as a matter of clemency.

Appearance: Pro se.

## OPINION

### I

Appellant argues that a merchant mariner's document is not required for service aboard uninspected vessels under 200 gross tons operating in harbors and sounds. I disagree. Appellant does not support this argument other than to state that he relied on this information relayed to him from his Union President.

Pursuant to 46 U.S.C. 8701(b), an individual may not serve, on board a vessel to which this section applies, if the individual does not have a merchant mariner's document...". Cf. Appeal Decision 1740 (BAMFORTH). As provided in 46 U.S.C. 8701(a), this section applies to all merchant vessels, including uninspected towing vessels, of at least 100 gross tons. Eight categories of exceptions to this requirement are set forth in 46 U.S.C. 8701(a). However, there is no exception for uninspected towing vessels of less than 200 gross tons operating in harbors and sounds. Relevant to the charge and specification, Appellant was required to hold a merchant mariner's document during the period he served aboard the tug MORIA MORAN.

### II

Appellant argues that his good faith reliance on the advice of his Union President resulted in his unintentional violation. Appellant's argument is foreclosed by his answer of "no contest". Appellant elected to answer "no contest" and to present no defense at the hearing.

An answer of "no contest" constitutes a waiver of all non-jurisdictional defects and defenses. As the Administrative Law Judge instructed Appellant, such an answer, in and of itself, is sufficient to support a finding of proved. (Transcript at p. 10). See 46 CFR 5.527(c). All answers except a denial operate as an admission of all

matters of fact as charged and averred. See Appeal Decision 2376 (FRANK); Appeal Decision 2362 (ARNOLD); Cf. Appeal Decision 2463 (DAVIS); Appeal Decision 2458 (GERMAN). An Appellant who fails to raise a defense at the hearing is precluded from raising it for the first time on appeal. See Appeal Decision 2376 (FRANK); Appeal Decision 2384 (WILLIAMS).

Appellant was under constructive notice of the statute in this matter by virtue of its publication in the United States Statutes at Large. *United States v. Casson*, 434 F.2d 415 (D.C. Cir. 1970). Similarly, Coast Guard regulations published in the Federal Register provide constructive notice of their requirements to those persons affected by the regulations. See 44 U.S.C. 1507. *Wolfson v. United States*, 492 F.2d 1386 (Ct.Cl. 1974). As such, Appellant's argument that he relied on the advice of his Union President has no merit.

### III

Appellant, through his appeal, seeks clemency. However, clemency is not an appropriate issue on appeal. Following an appeal, the Commandant is limited to the review of Decisions & Orders of Administrative Law Judges as set forth in 46 CFR 5.701(b), which states:

"The only matters which will be considered by the Commandant on appeal are:

- (1) Rulings on motions or objections which were not waived during the proceedings;
- (2) Clear errors on the record;
- (3) Jurisdictional questions.

Upon review of the record, the order of the Administrative Law Judge is proper and in accordance with current regulations. Upon a finding of proof of the charge and specification, the Administrative Law Judge must execute any outstanding order that has been remitted on probation. See Appeal Decision 1766 (O'LEARY); Appeal Decision 1682 (AGUEDA). The five month order in this case relates back to the Decision & Order of 9 January 1987 and the charge and specification in that hearing. However, the Administrative Law Judge in the current case had the discretion to revoke or suspend Appellant's document independent of, and in addition to, the sanction remaining from the previous outstanding order. See Appeal Decision 1766 (O'LEARY).

The Administrative Law Judge did not impose any additional suspension as a result of the charge and specification before him.

### CONCLUSION

Having reviewed the entire record, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

### ORDER

The decision and order of the Administrative Law Judge dated 8 December 1987, at New York, New York is AFFIRMED.

CLYDE T. LUSK, JR  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 7th day of February, 1989.

### 3. HEARING PROCEDURE

.36 Defense

not raised at hearing will not be considered on appeal

.83 Plea/Answer

no contest, effect of

### 4. PROOF AND DEFENSES

.25 Defense

not raised at hearing will not be considered on appeal

### 13. APPEAL AND REVIEW

#### .30 Clemency

clemency is generally not available on appeal

#### .50 Grounds for Appeal

prescribed by regulation

clemency is generally not available on appeal

### CITATIONS

Appeal Decisions Cited: Appeal Decision 1740 (BAMFORTH); Appeal Decision 1682 (AGUEDA); Appeal Decision 1766 (O'LEARY); Appeal Decision 2376 (FRANK); Appeal Decision 1203 (DODD); Appeal Decision 1712 (KELLY); Appeal Decision 2362 (ARNOLD); Appeal Decision 2385 (CAIN); Appeal Decision 2268 (HANKINS); Appeal Decision 1631 (WOLLITZ); Appeal Decision 466 (SIMMONS); Appeal Decision 1741 (GIL); Appeal Decision 1752 (HELLER); Appeal Decision 2463 (DAVIS); Appeal Decision 2458 (GERMAN); Appeal Decision 2376 (FRANK); Appeal Decision 2400 (WIDMAN); Appeal Decision 284 (WILLIAMS); Appeal Decision 2184 (BAYLESS); Appeal Decision 2151 (GREEN); Appeal Decision 1977 (HARMER).

NTSB Cases Cited: None.

Federal Cases Cited: None.

Statutes Cited: 46 U.S.C. 8701(a); 46 U.S.C. 8701(b).

Regulations Cited: 46 CFR 5.527(c).

\*\*\*\*\* END OF DECISION NO. 2481 \*\*\*\*\*